

1927

c 26 Succession Duty Act

Ontario

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CHAPTER 26.

The Succession Duty Act.

1. In this Act,

Interpre-
tation.

- (a) "Aggregate value" shall mean the fair market value of the property after the debts, encumbrances and other allowances authorized by section 4 are deducted therefrom, and for the purposes of determining the aggregate value and the rate or duty payable the value of property situate out of Ontario shall be included; "Aggregate value."
- (b) "Beneficial interest" and "dutiabie value" shall mean the fair market value of the property after the debts, incumbrances, and other allowances and exemptions authorized by this Act are deducted therefrom; R.S.O. 1914, c. 24, s. 2 (a, b). "Beneficial interest."
"Dutiabie value."
- (c) "Child" shall include any lawful child of the deceased or any lineal descendant of such child born in lawful wedlock or any person adopted while under the age of twelve years by the deceased as his child or any person to whom the deceased during the infancy of such person stood in *loco parentis* for a period of not less than five years or any lineal descendent of such adopted child or person as aforesaid; R.S.O. 1914, c. 24, s. 2 (c); 1925, c. 13, s. 3. "Child."
- (d) "Executor" shall include administrator; "Executor."
- (e) "Interest in expectancy" shall include an estate, income or interest in remainder or reversion and any other future interest whether vested or contingent but shall not include a reversion expectant on the determination of a lease; "Interest in expectancy."
- (f) "Passing on the death" shall mean passing either immediately on the death or after an interval, either certainly, or contingently, and either originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in Ontario or elsewhere; "Passing on the death."

"Property."

(g) "Property" shall include real and personal property of every description and every estate and interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

"Treasurer."

(h) "Treasurer" shall mean the Treasurer of Ontario. R.S.O. 1914, c. 24, s. 2 (*d-h*).

Declaration as to application of Act.

2. Except as to the rate of duty and as to the liability for duty of any property transferred *inter vivos*, this Act shall be deemed to be and to declare the law relating to succession duty since the 1st day of July, 1892, save as to any action or reference heretofore determined in any court, or as to any estate upon which the duty has been fully paid and satisfied. 1914, c. 10, s. 9.

What dispositions and devolutions of property shall confer successions.

3. Every disposition of property whether made before or after the 1st day of July, 1892, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death happening after the 1st day of July, 1892, of any person domiciled in Ontario, either immediately or after any interval, either certainly or contingently, and either originally, or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person so domiciled to any other person in possession or expectancy shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession," and the term "successor" shall denote the person so entitled. R.S.O. 1914, c. 24, s. 3, *part*.

Allowances made in computing dutiable value.

4. In determining the dutiable value of property or the value of a beneficial interest in property the fair market value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts and encumbrances and surrogate court fees (not including solicitor's charges); and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable thereto; but an allowance shall not be made,—

No allowance to be made for certain debts and expenses of administration.

(a) for any debts incurred by the deceased or encumbrances created by a disposition made by him unless such debts or encumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and to take effect out of his estate; nor

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; nor

- (c) more than once for the same debt or encumbrance charged upon different portions of the estate; nor
- (d) save as aforesaid, for the expense of the administration of the estate or the execution of any trust created by the will of the deceased or by any instrument made by him in his lifetime. R.S.O. 1914, c. 24, s. 4.

5. Where in respect of any succession in Ontario any estate, legacy or succession duty is payable in any part of the British Dominions other than Ontario, or in a foreign country by the law of that country, in respect of which no allowance of duty is made under section 10, and the Treasurer is satisfied that by reason of such succession any duty is payable there in respect of it, he may allow the amount of that duty to be deducted from the value of the succession in Ontario. R.S.O. 1914, c. 24, s. 5.

Allowance
in respect
of duty paid
elsewhere.

6. No duty shall be leviable,—

- (a) on any estate the aggregate value of which does not exceed \$5,000;
- (b) on property passing by will, intestacy or otherwise to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased where the aggregate value of the property of the deceased does not exceed \$25,000;
- (c) where the whole value of any property passing to any one person does not exceed \$300;
- (d) on property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario or by a corporation or a person resident in Ontario or on the amount of any unpaid subscription for any like purpose made by any person in his lifetime to any corporation or person mentioned in this subsection for which his estate is liable;
- (e) on any bond, debenture or debenture stock issued by a corporation having its head office in Ontario, transferable on a register at any place out of Ontario and which is owned by a person not domiciled at the time of his death in Ontario. 1914, c. 10, s. 2; 1915, c. 7, s. 2.

Exemption
from suc-
cession
duty.

7. Where any person dies from wounds inflicted, accident occurring or disease contracted, within twelve months before death while in the active military or naval service of His Majesty, whether in Canada or abroad, the Treasurer

Remission
of duty in
cases of
persons
killed in
the war.

may, if he thinks fit, remit the whole or any part of the duty chargeable in respect of property passing upon the death of the deceased to the wife, husband, child, son-in-law, daughter-in-law, father, mother, brother or sister of the deceased. 1915, c. 7, s. 6 (1); 1917, c. 27, s. 7.

Property
subject to
duty.

8.—(1) All property situate in Ontario and any income therefrom passing on the death of any person, whether the deceased was at the time of his death domiciled in Ontario or elsewhere as well as all other property subject to succession duty upon a succession shall be subject to duty at the rates hereinafter imposed. R.S.O. 1914, c. 24, s. 7 (1); 1914, c. 10, s. 3.

Property
deemed to
pass on the
death.

(2) Property passing on the death of the deceased shall be deemed to include for all purposes of this Act the following property:—

Property
transferred
in contem-
plation of
death.

(a) Any property, or income therefrom voluntarily transferred by deed, grant, bargain, sale or gift made in general contemplation of the death of the grantor, bargainor, vendor, or donor and with or without regard to the imminence of such death, or made or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise, or the effect of which is that any person becomes beneficially entitled in possession or expectancy to such property or income. R.S.O. 1914, c. 24, s. 7 (2) (a); 1914, c. 10, s. 4.

*Donatio
mortis
causa.*

(b) (i) Any property taken as a *donatio mortis causa*;

(ii) Any property taken under a disposition operating or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, made since the 1st day of July, 1892;

Gifts where
possession
and enjoy-
ment have
not passed.

(iii) Any property taken under any gift whenever made of which actual and *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him, whether voluntary or by contract or otherwise, except as hereinafter mentioned. 1919, c. 9, s. 1.

Property
vested jointly
with interest
to survivor.

(c) Any property which a person having been absolutely entitled thereto, has caused, or may cause to be transferred to, or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person,

including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert, or by arrangement with any other person;

- (d) Any property, passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not, as between the settlor and any other person, made by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life, or any other period determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself, the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property, or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof; Property passing under settlement, etc.
- (e) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased; R.S.O. 1914, c. 24, s. 7 (2); (cls. c-e). Annuities, insurance, etc.
- (f) Money received under a policy of insurance whether such insurance is payable to or in favour of a preferred beneficiary within the meaning of *The Insurance Act*, or not, effected by any person on his life, where the policy is wholly kept up by him for the benefit of any existing or future donee, whether nominee or assignee, or for any person who may become a donee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit; R.S.O. 1914, c. 24, s. 7 (2) (f); 1925, c. 13, s. 4 (1). Policies of insurance. Rev. Stat. c. 222.
- (g) Any property of which the person dying was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property as he thinks fit, whether the power is exercisable by instrument *inter vivos* or by will or both, including the powers exercisable by a Property over which decedent had power of disposal.

tenant in tail whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose;

Dower and
curtesy.

- (h) Any estate in dower or by the curtesy in any land of the person so dying to which the wife or husband of the deceased becomes entitled on the decease of such person. R.S.O. 1914, c. 24, s. 7 (2) (g, h).

Property
deemed to
pass on
death.

- (i) Any property transferred since the 1st day of July, 1892, for partial consideration in money or money's worth paid to the transferor for his own use and benefit to the extent to which the value of the property so transferred exceeds the value of the consideration so paid. 1925, c. 13, s. 4 (2).

Exemptions.

(3) Notwithstanding anything herein contained, no duty shall be payable in respect of any property (of which actual and *bona fide* possession and enjoyment shall have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him, whether voluntarily or by contract or otherwise),—

Property
transferred
to certain
relatives
more than
three years
before death.

- (a) given more than three years before the death of the donor to the father, mother, child, son-in-law or daughter-in-law of the donor, to the value or amount of \$20,000 in the aggregate among all of them; or

Gifts *inter vivos*
to
\$500.

- (b) given by the donor in his lifetime and not exceeding in value the sum of \$500 in the case of any one donee; or

Property
transferred
for consider-
ation.

- (c) actually and *bona fide* transferred for full consideration in money or money's worth paid to the transferor for his own use and benefit. 1919, c. 9, s. 2; 1925, c. 13, s. 5.

Amount of
duty.

9. Subject to the exceptions mentioned in sections 6, 7 and 8 there shall be levied and paid for the purpose of raising a revenue for Provincial purposes in respect of any succession or on property passing on the death according to the dutiable value, the following duties over and above the fees paid under *The Surrogate Courts Act*—

Rev. Stat.
c. 94.

(1) Where the aggregate value of the property exceeds \$25,000, and any property passes in manner hereinbefore mentioned, either in whole or in part to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, son-in-law or daughter-in-law of the deceased, the same or so much thereof as so passes and the succession thereto shall be subject to a duty at the rate and on the scale as follows:—

Where property passes to grand-parents, etc. and exceeds \$25,000.

Where the aggregate value

Where property passes to grand-parents, etc.

- (a) Exceeds \$25,000 and does not exceed \$50,000,—
1 per centum;
- (b) Exceeds \$50,000 and does not exceed \$75,000,—
2½ per centum;
- (c) Exceeds \$75,000 and does not exceed \$100,000,—
3½ per centum;
- (d) Exceeds \$100,000 and does not exceed \$150,000,—
5 per centum;
- (e) Exceeds \$150,000 and does not exceed \$200,000,—
5½ per centum;
- (f) Exceeds \$200,000 and does not exceed \$300,000,—
6 per centum;
- (g) Exceeds \$300,000 and does not exceed \$400,000,—
6½ per centum;
- (h) Exceeds \$400,000 and does not exceed \$500,000,—
7 per centum;
- (i) Exceeds \$500,000 and does not exceed \$600,000,—
7½ per centum;
- (j) Exceeds \$600,000 and does not exceed \$700,000,—
8 per centum;
- (k) Exceeds 700,000 and does not exceed \$800,000,—
8½ per centum;
- (l) Exceeds \$800,000 and does not exceed \$900,000,—
9 per centum;
- (m) Exceeds \$900,000 and does not exceed \$1,000,000,—9½ per centum;
- (n) Exceeds \$1,000,000,—10 per centum. 1914, c. 10, s. 7, part; 1915, c. 7, s. 4 (1); 1920, c. 8, s. 2.

(2) Where the aggregate value of the property exceeds \$50,000 and the value of the property passing in manner hereinbefore mentioned to any one of the persons mentioned in the next preceding subsection exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the rates in the next preceding subsection mentioned as follows:—

Additional duty where share exceeds \$50,000.

Where the whole amount so passing to one person :—

- (a) Exceeds \$50,000 and does not exceed \$75,000,—
1½ per centum;
- (b) Exceeds \$75,000 and does not exceed \$100,000,—
2 per centum;
- (c) Exceeds \$100,000 and does not exceed \$150,000,—
2½ per centum;
- (d) Exceeds \$150,000 and does not exceed \$300,000,—
3 per centum;
- (e) Exceeds \$300,000 and does not exceed \$400,000,—
3½ per centum;
- (f) Exceeds \$400,000 and does not exceed \$500,000,—
4½ per centum;
- (g) Exceeds \$500,000 and does not exceed \$600,000,—
5 per centum;
- (h) Exceeds \$600,000 and does not exceed \$700,000,—
5½ per centum;
- (i) Exceeds \$700,000 and does not exceed \$750,000,—
6 per centum;
- (j) Exceeds \$750,000 and does not exceed \$800,000,—
6½ per centum;
- (k) Exceeds \$800,000 and does not exceed \$900,000,—
7 per centum;
- (l) Exceeds \$900,000 and does not exceed \$1,000,000,—
7½ per centum;
- (m) Exceeds \$1,000,000 and does not exceed \$1,200,000,—
8 per centum;
- (n) Exceeds \$1,200,000 and does not exceed \$1,400,000,—
8½ per centum;
- (o) Exceeds \$1,400,000 and does not exceed \$1,600,000,—
9 per centum;
- (p) Exceeds \$1,600,000 and does not exceed \$1,800,000,—
9½ per centum;
- (q) Exceeds \$1,800,000 and does not exceed \$2,000,000,—
10 per centum;
- (r) Exceeds \$2,000,000 and does not exceed \$2,200,000,—
10½ per centum;
- (s) Exceeds \$2,200,000 and does not exceed \$2,400,000,—
11 per centum;
- (t) Exceeds \$2,400,000 and does not exceed \$2,600,000,—
12 per centum;

- (u) Exceeds \$2,600,000 and does not exceed \$2,800,000,—13 per centum;
- (v) Exceeds \$2,800,000 and does not exceed \$3,000,000,—14 per centum;
- (w) Exceeds \$3,000,000,—15 per centum.
1914, c. 10, s. 7, *part*; 1920, c. 8, s. 3; 1921, c. 10, s. 2.

(3) Where the aggregate value of the property exceeds \$10,000 and any property passes in manner hereinbefore mentioned, either in whole or in part to or for the benefit of any lineal ancestor of the deceased, except the grandfather, grandmother, father and mother, or to any brother or sister of the deceased or to any descendant of such brother or sister or to a brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister, the same or so much thereof as so passes shall be subject to a duty at the rate and on the scale as follows:—

Rate of
duty where
property
passes to
certain
relatives.

Where the aggregate value—

- (a) Exceeds \$10,000 and does not exceed \$25,000,—5 per centum;
- (b) Exceeds \$25,000 and does not exceed \$50,000,—7 per centum;
- (c) Exceeds \$50,000 and does not exceed \$100,000,—10 per centum ;
- (d) Exceeds \$100,000 and does not exceed \$200,000,—12½ per centum;
- (e) Exceeds \$200,000 and does not exceed \$400,000,—13 per centum;
- (f) Exceeds \$400,000 and does not exceed \$600,000,—14 per centum;
- (g) Exceeds \$600,000 and does not exceed \$800,000,—15 per centum;
- (h) Exceeds \$800,000 and does not exceed \$1,000,000,—16 per centum;
- (i) Exceeds \$1,000,000,—17 per centum. 1914, c. 10, s. 7, *part*; 1920, c. 8, s. 4; 1921, c. 10, s. 2.

(4) Where the aggregate value of the property exceeds \$10,000 and the value of the property passing in manner hereinbefore mentioned to any one of the persons mentioned in the next preceding subsection, except the grandfather, grandmother, father and mother exceeds the amount herein-after mentioned, a further duty shall be paid on the amount so passing in addition to the duty in the next preceding subsection mentioned as follows:—

Additional
duty
where
share
exceeds
\$10,000.

Where the whole amount so passing to one person—

- (a) Exceeds \$10,000 and does not exceed \$75,000,—
2½ per centum;
- (b) Exceeds \$75,000 and does not exceed \$150,000,—
3 per centum;
- (c) Exceeds \$150,000 and does not exceed \$250,000,—
3½ per centum;
- (d) Exceeds \$250,000 and does not exceed \$300,000,—
4 per centum;
- (e) Exceeds \$300,000 and does not exceed \$350,000,—
4½ per centum;
- (f) Exceeds \$350,000 and does not exceed \$450,000,—
5 per centum;
- (g) Exceeds \$450,000 and does not exceed \$500,000,—
5½ per centum;
- (h) Exceeds \$500,000 and does not exceed \$600,000,—
6 per centum;
- (i) Exceeds \$600,000 and does not exceed \$700,000,—
6½ per centum;
- (j) Exceeds \$700,000 and does not exceed \$800,000,—
7 per centum;
- (k) Exceeds \$800,000 and does not exceed \$900,000,—
7½ per centum;
- (l) Exceeds \$900,000 and does not exceed \$1,000,—
000,—3 per centum;
- (m) Exceeds \$1,000,000 and does not exceed \$1,500,—
000,—9 per centum;
- (n) Exceeds \$1,500,000 and does not exceed \$2,000,—
000,—10 per centum;
- (o) Exceeds \$2,000,000 and does not exceed \$2,500,—
000,—11 per centum;
- (p) Exceeds \$2,500,000 and does not exceed \$3,000,—
000,—12 per centum;
- (q) Exceeds \$3,000,000,—13 per centum. 1914, c. 10,
s. 7, *part*; 1920, c. 8, s. 5; 1921, c. 10, s. 2.

Additional
duty, how
fixed where
deceased
dies domi-
ciled out of
Ontario.

(5) The additional duty provided for by subsections 2 and 4 shall be payable on the property in Ontario, where the deceased dies domiciled elsewhere than in Ontario, but for the purpose of fixing the rate of such duty the beneficial interest in property out of Ontario passing to the successor or other person on the same death shall be added to the value of the

property in Ontario, and nothing in this Act shall be construed to impose any duty, directly or otherwise, on property out of Ontario owned by any deceased person so domiciled. 1914, c. 10, s. 7, *part*.

(6) Where the aggregate value of the property exceeds \$5,000 and any property passes in manner hereinbefore mentioned, either in whole or in part to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above mentioned or to or for the benefit of any stranger in blood to the deceased, the same or so much thereof as so passes shall be subject to a duty at the rate and on the scale as follows:—

Rate where
property
passes to
other
persons.

Where the aggregate value,—

- (a) Exceeds \$5,000 and does not exceed \$10,000,—
7½ per centum;
- (b) Exceeds \$10,000 and does not exceed \$50,000,—
12½ per centum;
- (c) Exceeds \$50,000 and does not exceed \$100,000,—
15 per centum;
- (d) Exceeds \$100,000 and does not exceed \$200,000,—
17½ per centum;
- (e) Exceeds \$200,000 and does not exceed \$300,000,—
20 per centum;
- (f) Exceeds \$300,000 and does not exceed \$400,000,—
22½ per centum;
- (g) Exceeds \$400,000 and does not exceed \$500,000,—
25 per centum.
- (h) Exceeds \$500,000 and does not exceed \$600,000,—
27½ per centum;
- (i) Exceeds \$600,000 and does not exceed \$700,000,—
30 per centum;
- (j) Exceeds \$700,000 and does not exceed \$800,000,—
32½ per centum;
- (k) Exceeds \$800,000,—35 per centum. 1914, c. 10,
s. 7, *part*; 1915, c. 7, s. 4 (4); 1920, c. 8, s. 6.

10.—(1) Where the Treasurer is satisfied that in any part of the British Dominions other than Ontario, or in any foreign country to which this section applies, any estate, legacy or

Allowance for
duty paid
elsewhere on
same death.

succession duty is paid in respect of property which is also chargeable with duty in Ontario, an allowance for the duty so paid shall be made from the amount payable to this Province with respect to the same property; provided that any such allowance shall be made only as to such part of the British Dominions or as to such foreign country to which the Lieutenant-Governor in Council shall have extended the provisions of this section and such allowance shall be in accordance with such terms or understanding as the Treasurer may deem proper to make or have with such part of the British Dominions or such foreign country; provided also that the Lieutenant-Governor in Council may revoke any order-in-council made under this section. R.S.O. 1914, c. 24, s. 9; 1925, c. 13, s. 6.

Proviso.

Law of England as to local situs adopted.

(2) In determining for the purpose of this section only whether property is locally situate in Great Britain or in the Province of Ontario, the law of England shall be followed. 1918, c. 6, s. 4.

*Foreign executors, etc., not to transfer stock until duty paid.

11.—(1) No foreign executor shall assign or transfer any bond, debenture, stock or share of any bank or other corporation whatsoever, having its head office in Ontario, standing in the name of the deceased person, or in trust for him, until the duty, if any, is paid or security is given as required by section 12, and any such bank or corporation allowing a transfer of any debenture, bond, stock or share contrary to this section shall be liable for such duty. R.S.O. 1914, c. 24, s. 10.

Property not to be transferred until duty paid or secured.

(2) No property in Ontario belonging to any deceased person at the time of his death or held in trust for him, whether such deceased person was at the time of his death domiciled in Ontario or elsewhere, shall be transferred, paid or given to the person entitled thereto until the duty, if any, is paid or security given therefor, and any corporation or person allowing such property to be so transferred, paid or given contrary to this subsection shall be liable for such duty. 1925, c. 13, s. 7.

Filing inventory, etc., liability of heir, etc.

12.—(1) Every heir, legatee, donee or other successor and every person to whom property passes for any beneficial interest in possession or in expectancy shall be liable for the duty upon so much of the property as so passes to him, and shall within six months after the death of the deceased or such later time as may be allowed by the Treasurer make and file with the registrar of the surrogate court of the county or district in which the deceased had a fixed place of abode or in which the property or any part thereof is situate a full, true and correct statement under oath showing,—

(a) a full inventory in detail of all the property of the deceased person and the fair market value thereof on the date of his death;

(b) the several persons to whom the same passes, their places of residence and the degrees of relationship, if any, in which they stand to the deceased.

(2) Where any one of the persons mentioned in subsection 1 has made and filed the statement required by that subsection, the Treasurer may dispense with the making of the statement by any other of them.

Where one files statement others to be relieved.

(3) Before the issue of letters probate or letters of administration to the estate of a deceased person a statement under oath similar to that required by subsection 1 shall be made by the executor or administrator applying therefor and filed with the surrogate registrar of the county or district in which the application is made, and if the duty has not been paid by the successors or security to the satisfaction of the Treasurer given, the applicant shall in consideration of the grant applied for being made furnish a bond in a penal sum to be fixed by the Treasurer, executed by himself and two sureties, to be approved by the registrar, conditioned for the due performance of his duty under this Act as to accounting for the succession duty to His Majesty for which the property of the deceased is chargeable in default of payment being made by the persons liable therefor. 1914, c. 10, s. 11, *part*.

Duty and liability of executors, etc.

(4) The Treasurer may accept a sufficient sum as security for the due payment of any duty in lieu of or in addition to any other security, and he may in such case allow to the depositor interest thereon at a rate not exceeding four per centum per annum upon so much thereof as from time to time exceeds the amount of duty which has become payable under this Act. 1914, c. 10, s. 11, *part*; 1925, c. 13, s. 8 (1).

Accepting lump sum as security.

(5) If at any time it shall be discovered that any property was not disclosed upon the grant of letters probate, or of administration, or the filing of the account, the person acting in the administration of such property, and the person, who is liable for the duty payable under this Act shall pay to the Treasurer the amount which, with the duty, if any, previously payable or paid on such property, shall be sufficient to cover the duty chargeable according to the true value thereof at the rates fixed by this Act, together with interest thereon, and shall at the same time pay to the Treasurer as a penalty a further duty of twenty-five per centum of the duty chargeable on the value of the property not disclosed, and shall also, within two months after the discovery of the omission, deliver to the surrogate registrar an affidavit or account setting forth the property so not disclosed, and the value thereof, in default of which he shall incur a penalty of \$10 for each day during which the default continues. R.S.O. 1914, c. 24, s. 11 (4).

Property not disclosed on application for probate, etc.

Penalty for failure to file inventory.

(6) For default in complying with subsection 1 of this section the person who is liable for the duty, if any, shall incur a penalty of \$10 for each day during which the default continues. 1925, c. 13, s. 8 (2).

Proceedings when Treasurer not satisfied with valuation.

13.—(1) The surrogate judge of the county in which the property or any part thereof, subject to duty is situate shall, at the instance of the Treasurer and upon such notice by personal or substitutional service to the executor or such interested parties as he by order directs, enquire into the correctness of the inventory, and as to the value so sworn to, and determine what property should be included in such inventory and the value of the same, fix and settle the amounts of the debts and other allowances and exemptions, and assess the cash value of every annuity, term of years, life estate, income or other estate, and of every interest in expectancy as provided by this Act, and shall at the time and place mentioned in the notice or any other time and place named by him value all property at the fair market value, and hear and determine all questions relative to the liability of property, the amount of duty and the successor and other persons liable therefor. R.S.O. 1914, c. 24, s. 12 (1); 1914, c. 10, s. 12; 1916, c. 7, s. 2.

Powers of judge.

(2) The surrogate judge shall have all the powers of a judge of the county court at the trial of any action and the power to compel discovery, the production of books, papers and documents and he may with the consent of the Official Guardian appoint for the purposes of this Act a guardian of any infant who has no guardian.

Enforcement of judgment.

(3) The judgment of the surrogate judge shall have the like force and effect and be enforceable in the same manner as a judgment of the county court.

Judge may direct appraisement of property by sheriff.

(4) In lieu of or in addition to evidence of valuation of property the surrogate judge may in the first instance or at any time before judgment, and at the request of the Treasurer shall, issue a direction to the sheriff of the county where any property is situate in respect to which duty is payable, or to some other competent person, to make an appraisement of the property mentioned in the inventory or any part thereof, or of any property wrongfully omitted.

Appraisement at fair market value.

(5) When so directed the sheriff shall forthwith appraise the property mentioned in the inventory, or any part thereof, as directed by the surrogate judge, or any property wrongfully omitted, at its fair market value at the date of the death, or at the time provided in section 17, as the case may be, and make a report in writing to the surrogate judge of his appraisement and of such other facts as he may deem proper.

(6) In addition to his actual and necessary travelling expenses the sheriff shall be paid for services performed under this Act at the rate of \$1 for every hour in ordinary cases and at the rate of \$2 for every hour in important or difficult cases but such fees shall in no case exceed \$10 for any day upon which he may be employed. R.S.O. 1914, c. 24, s. 12, (2-6). Sheriff's fees.

(7) In case the Treasurer is of the opinion that any person or corporation is in possession of any property of a deceased person which is or may be dutiable under this Act, or that any person or corporation is in possession of knowledge or information in reference to the property of any deceased person which is or may be dutiable under this Act, or in case the Treasurer for any other reason deems it advisable to examine any person in or about the enforcement of the provisions of this Act, the surrogate court judge of the county in which the property or any part thereof is supposed to be situated, shall, at the instance of the Treasurer, order such person or any officer of such corporation to attend before him and submit to examination on oath touching the property of such deceased person, or touching any property in his knowledge, which is, or may be, dutiable under this Act, or otherwise, as may seem just, and may direct the persons to be examined to make production upon oath of any books, papers, or other writings or documents, relating to the matters in issue which may be in the possession of such person or of any corporation. 1916, c. 7, s. 3. Examination of persons having dutiable property in possession.

14. The value of every annuity, term of years, life estate, income or other estate, and every interest in expectancy, in respect of which duty is payable under this Act, shall for the purposes of this Act be determined by such rule, method and standards of mortality and of value and at such rate of interest as the Lieutenant-Governor in Council may deem fit. 1925, c. 13, s. 9. Valuation of annuities, etc.

15.—(1) The Treasurer, or any other person interested, may within thirty days from the date of the judgment of the surrogate judge appeal to the Appellate Division, whose decision shall be final, but no appeal shall lie unless that portion of the property or of the debts and other allowances and exemptions in respect of which such appeal is taken, or all combined, exceeds in value or amount \$10,000 according to such judgment. Appeal from surrogate judge.

Proviso.

(2) The costs of all such proceedings shall be in the discretion of the court or judge and shall be on the county court scale, except the costs of an appeal, which shall be according to the tariff applicable to proceedings in the Supreme Court. R.S.O. 1914, c. 24, s. 14. Costs.

Duty payable
within 18
months from
death of
deceased.

16.—(1) The duty imposed by this Act, unless otherwise herein provided, shall be due at the death of the deceased, and payable within eighteen months thereafter, and if the same, or any part thereof, is paid within that period, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of five per centum per annum from the death of the deceased shall be charged and collected upon the amount remaining from time to time unpaid, and such duty, or so much thereof as remains unpaid, with interest thereon, shall be and remain a lien upon the property in respect of which it is payable until paid; provided that the duty chargeable upon any legacy given by way of annuity, whether for life or otherwise, may be paid in four equal consecutive annual instalments, the first of which shall be paid before the falling due of the first year's annuity and each of the three others within the same period in each of the next succeeding three years, and for non-payment when due interest shall be collected from the date of the maturity of each instalment until paid, and if the annuitant dies before the expiration of the four years, the balance of the duties shall be payable by the estate or fund out of which the annuity is charged or derived.

Proviso.

Extension of
time by
order-in-
council.

(a) The Lieutenant-Governor in Council, upon proof to his satisfaction that payment of the duty within the time limited by this subsection would be unduly onerous, may extend the time for the payment to such date and upon such terms as may be deemed proper.

Interest
allowed for
prepayment.

(b) For payment before the time provided for in this section the Treasurer may allow to the person accountable for the duty, interest at a rate not exceeding four per centum per annum upon the amount so paid. R.S.O. 1914, c. 24, s. 15 (1); 1916, c. 7, s. 4; 1925, c. 13, s. 10.

Treasurer
may require
payment to
be made in
succession
duty free
bonds.

(c) Where an estate includes securities of the Province of Ontario issued under provisions which exempt them from succession duty then notwithstanding any declaration or provision made by will or otherwise by the deceased, the Treasurer of Ontario may require that such securities, or a sufficient part thereof, shall be delivered to him and applied on account of the succession duty payable in respect of such estate at the current market value thereof at the date of the death of the decedent as evidenced by *bona fide* transactions or at such price paid for same by the deceased if purchased previous to the 1st day of March, 1925, whichever may be greater, or at such other price as may be determined by a surrogate judge in manner provided by section 13 hereof. 1925, c. 13, s. 2 (1).

(2) Where the whole or any part of the income or interest of any property is directed to be accumulated for any period for the benefit of any person or persons or class to whom or to any of whom at the expiration of such period such property passes, or income, or interest, becomes payable, such property shall be deemed for the purpose of this Act an interest in possession, passing at the death of the deceased, and the duty thereon shall be payable within eighteen months thereafter. R.S.O. 1914, c. 24, s. 15 (2).

Time for payment of duty where income accumulated.

(3) Property passing upon the death in respect to which any person is given such a general power to appoint, as is mentioned in clause *g* of subsection 2 of section 8 shall be liable to duty and the duty thereon shall be payable in the same manner and at the same time as if the property itself had been given to the donee of the power. R.S.O. 1914, c. 24, s. 15 (2); 1914, c. 10, s. 8.

Where person has general power of appointment.

(4) When the duty or any part thereof has been paid or secured to the satisfaction of the Treasurer he shall, if required by the person accounting for the duty, give a certificate to that effect which shall discharge from any further claim for such duty the property mentioned in the certificate; provided the Treasurer shall not be bound to grant such certificate until the expiration of one year from the death of the deceased.

Certificate of discharge to be given by Provincial Treasurer.

(5) Such certificate shall not discharge any person or property from the duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property, in respect of which duty has been already accounted for; provided that a certificate purporting to be a discharge of the whole duty payable in respect of any property included in the certificate shall exonerate from duty property in the hands of a *bona fide* purchaser for valuable consideration without notice. R.S.O. 1914, c. 24, s. 15 (4,5).

Certificate not a discharge in case of fraud, etc.

Except as to *bona fide* purchaser.

17.—(1) Where the dutiable property includes any interest in expectancy the duty on such interest may be paid within the eighteen months limited by subsection 1 of section 16, and when so paid the duty shall be on the value of such interest ascertained as provided herein as at the death of the deceased.

Time for payment of duty on interest in expectancy.

(2) With the consent in writing of the Treasurer, the duty may be paid after the time so limited and before such interest comes into possession; but if such consent is given the duty shall then be on a value not less in any event than the value of such interest in expectancy ascertained as provided herein as at the date when the duty is paid; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest.

Payment after time limited.

Payment forthwith when interest in expectancy falls into possession.

(3) The duty on any interest in expectancy, if not sooner paid, shall be payable forthwith when such interest comes into possession, in which case the duty shall be on the value ascertained as provided herein as at the date of coming into possession; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest; and if such duty is not so paid, interest at the rate of five per centum shall be charged and collected thereon from the date when such interest in expectancy came into possession.

Where no person presently beneficially entitled.

(4) Subject to the provisions of subsection 2 of section 16, where any property so passes that no person is beneficially entitled to the present enjoyment of the income or any part thereof for any term of years, or other period, whether certain or uncertain, the duty shall be payable on the present value of such income or part thereof for such term or period computed as provided by section 14 and shall be payable within eighteen months after the death of the deceased.

Commutation of duty.

(5) Notwithstanding that the duty may not be payable under this section until the time when the right of possession or actual enjoyment accrues, an executor or person who has the custody or control of the property, may, with the consent of the Treasurer, commute the duty which would or might, but for the commutation, become payable in respect of such interest in expectancy, for a certain sum to be presently payable, and for determining that sum the Treasurer shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to, and the rate and amount of such duty and interest; and on the receipt of such sum the Treasurer shall give a certificate of discharge from such duty.

Interest in expectancy to be charged with duty paid.

(6) Where the duty on any interest in expectancy has been commuted and paid under the provisions of this section before such interest in expectancy falls into possession the duty so paid shall be charged on such interest in expectancy, and shall be repaid with interest at the rate of four per centum per annum to the person, who has paid the same by the person entitled to such interest in expectancy at the time when such interest comes into possession.

Composition by Treasurer for duty payable in certain cases.

(7) Where it appears to the Treasurer, that by reason of the number of deaths on which property has passed or of the complicated or contingent nature of the interests of different persons in property passing on the death, it is difficult to ascertain exactly the rate or amount of duty payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Treasurer on the application of any person accountable for any duty thereon, and upon his furnishing all the information in his power respecting the amount of the property and the several interests therein, and other

circumstances of the case, may, by way of composition for all or any duty payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper and may accept payment of the sum so assessed in full discharge of all claims for duty in respect of such property or interest and shall give a certificate of discharge accordingly. R.S.O. 1914, c. 24, s. 16.

18. Upon the application of any person liable for the payment of the duty the surrogate judge may from time to time, on notice to the Treasurer, and for just cause shown make upon such terms as he may deem proper an order extending the time fixed by this Act for payment thereof for any period, in the aggregate not exceeding one year, or with the consent of the Treasurer for a longer period, but, unless the judge otherwise orders, the duty shall nevertheless bear interest at the rate of five per centum per annum from the day upon which such duty might have been paid without interest. R.S.O. 1914, c. 24, s. 17.

Extension of time for the payment of duty.

19.—(1) No executor or trustee shall in the first instance be personally liable to pay the duty on any property to which any legatee, donee or other successor is beneficially entitled, but an executor, trustee or other person in whom any interest in any property so passing to any legatee, donee or other successor, or the management thereof is at any time vested, shall not transfer such property to the person so entitled without deducting therefrom the duty for which such successor is liable and any executor, trustee or other person who transfers such property without deducting the duty therefrom shall pay to the Treasurer the amount of such duty in respect of such property and interest thereon together with an additional rate of fifty per centum of the duty payable in respect of such property and such combined amounts shall be recoverable against the executor, trustee or other person so chargeable.

Non-personal liability of executors. Not to transfer property until duty paid.

(2) Every sum of money retained by an executor or trustee or paid into his hands for the duty on any property shall be paid by him forthwith to the Treasurer or as he may direct.

Money retained by executor to be paid over to Treasurer.

(3) Such executor and trustee shall for the purpose of the collection and payment of any duty which under the provisions of this Act it is his duty to collect and pay over to the Treasurer be deemed to be an officer for the collection thereof within the meaning of *The Public Revenue Act, 1914*, c. 10, s. 13.

Responsibility of executor and trustee to Crown.

Rev. Stat. c. 24.

(4) Any person who may be required to pay the duty in respect of any property which has come into his possession, or is vested in him or is under his control shall, for the purpose

Persons liable to duty may raise same by sale, etc.

of paying such duty or raising the amount of the duty when already paid, have power to raise the amount of such duty and any interest and expense properly paid or incurred by him in respect thereof by sale, mortgage or lease of so much of the property as may be necessary for such purpose. 1915, c. 7, s. 5.

Refunding
duty upon
subsequent
payment of
debts.

20. Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, if such duty has not been paid to the Treasurer, or by the Treasurer if it has been so paid. R.S.O. 1914, c. 24, s. 19.

Fees of
judges and
registrars.

21. The judges and registrars of the several surrogate courts and solicitors practising therein shall be entitled to take for the performance of duties and services under this Act, similar fees to those payable to them for the like services under and by virtue of *The Surrogate Courts Act* and the surrogate court rules. R.S.O. 1914, c. 24, s. 20.

Rev. Stat.
c. 94.

Recovery of
succession
duties by
action.

22.—(1) Any duty payable under this Act shall be recoverable with full costs as a debt due to His Majesty from any person liable therefor by action in or on summary application to any court of competent jurisdiction.

Matters to be
determined by
Supreme
Court in
action.

(2) The Supreme Court shall also have jurisdiction to determine what property is liable to duty under this Act, the amount of such duty and the time or times when the same is payable, and may itself or through any referee exercise any of the powers conferred upon any officer or person by the said sections.

Action may
be brought
before time
for payment
of duty.

(3) An action may be brought for any of the purposes in this Act mentioned, notwithstanding the time for the payment of the duty has not arrived, subject to the discretion of the court as to costs.

Production of
documents,
examination
of witnesses,
etc.

(4) In every such action His Majesty's Attorney-General shall have the same right, either before or after the trial, to require the production of documents, to examine parties or witnesses, or to take such other proceedings in aid of the action as a plaintiff has in an ordinary action. R.S.O. 1914, c. 24, s. 21.

Caution.

23. Where duty is claimed in respect of any land, or money secured by mortgage, or charge upon land, the Treasurer may cause to be registered in the proper registry office, or in the proper office of land titles, if the land is registered under *The Land Titles Act*, a caution claiming duty in respect of such land, mortgage, or charge by reason of the

Rev. Stat.
c. 158.

death of the deceased and the land, mortgage or charge, shall upon such registration be subject to the lien of the Crown for duty, but nothing herein contained shall effect the rights of the Crown to a lien independently of the caution. R.S.O. 1914, c. 24, s. 22.

24.—(1) The Treasurer may appoint a commissioner or commissioners to,—

Appoint-
ment of
commis-
sioner to
inquire into
estate.

- (a) ascertain and inquire into what property, if any, is subject to succession duty under the terms of this Act; the fair market value of such property, the amount of duty payable upon such property and the persons liable therefor;
- (b) fix and settle the amount of the debts and other allowances and exemptions and assess the cash value of every annuity, term of lease, term of years, life estate, income or other estate and of every interest in expectancy as provided by this Act;
- (c) make inquiries as to any property transferred *inter vivos* or wrongfully omitted from any inventory filed; and
- (d) generally make inquiry as to any matter or thing arising under this Act in connection with the estate of any deceased persons.

(2) The commissioner shall direct that notice be given by personal service or otherwise to the executor or such interested parties as he may think proper.

Notice to
parties.

(3) The commissioner shall have all the powers of a judge of the Supreme Court of Ontario at the trial of any action and all the powers which may be conferred upon a commissioner under *The Public Inquiries Act*, and in addition thereto may, either at or previous to the hearing, make such order for the attendance and examination of any person or the officer or officers of any corporation for discovery or otherwise as he may deem expedient and may direct the persons to be examined to make production upon oath of any books, papers or other writings or documents which may be in the possession of such person or of any corporation.

Powers of
commis-
sioner.

Rev. Stat.
c. 20.

Examina-
tion for
discovery.

(4) Where the Treasurer or any person interested desires to produce for use before the commissioner the evidence of any person to be taken *de bene esse* or to be taken out of Ontario, an order may be made for the examination of such person or for the issue of a commission in the like circumstances and with the like effect as a similar order may be made in an action.

Taking
evidence
de bene esse
or by com-
mission.

Evidence to
be taken
down.

(5) The evidence of the witnesses taken before such commissioner shall be taken down in writing and shall, at the request of either party, be transmitted by the commissioner to the Central Office at Osgoode Hall.

Appoint-
ment of
guardian
for infant
parties.

(6) A commissioner may, with the consent of the Official Guardian, appoint for the purposes of this Act, a guardian of any infant who has no guardian.

Costs.

(7) The costs of proceedings shall be paid as directed by the commissioner.

Filing
report of
commission.

(8) The report of the commissioner may be filed in the Central Office of the Supreme Court of Ontario at Osgoode Hall, in the City of Toronto.

Report to
become a
judgment.

(9) Upon the report being so filed, it shall become a judgment of the Supreme Court of Ontario, and may be enforced in the same manner and by the like processes as if the judgment had been made by a judge of the Supreme Court at the trial of an action.

Entry of
judgment.

(10) The judgment shall be entered in the same manner as a judgment of the court at the trial.

Appeal to
Appellate
Division.

(11) Either the Treasurer or any person interested may appeal from the said judgment to the Appellate Division of the Supreme Court of Ontario, but there shall be no further or other appeal.

Rules of
procedure.

(12) Rules of Court for the better carrying out of the purposes of this Act and the regulation of practice thereunder, including the practice of any appeal, may be made by any authority to whom is committed the power of making rules of Court; but until such rules are made the practice shall be governed by the rules of the Supreme Court of Ontario. 1916, c. 7, s. 5.

Lieutenant-
Governor in
Council may
make regula-
tions.

25. The Lieutenant-Governor in Council may make rules and regulations for carrying into effect the provisions of this Act, and such rules and regulations shall be laid before the Assembly forthwith, if in session at the date of such rules and regulations, and if not then in session such rules and regulations shall be laid before the Assembly within the first seven days of the session next after the same are made. R.S.O. 1914, c. 24, s. 23.
